

MAHADEVAN & ANOR. v. PATEL

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) &
Wan Suleiman F.J.) June 6, 1975]

[Alor Star — Federal Court Civil Appeal No. 6 of 1975]

Land Law — Caveat — Caveatable interest — Loan given by company intended to be secured by charge — Whether managing director of company has caveatable interest.

In this case one Ratnavale had had business dealings with the respondent, who was the managing director of Messrs. Manilal & Sons (M) Ltd. A loan of \$250,000 was made to Ratnavale and he acknowledged receipt of this sum from the company. It was the intention that there would be a charge over lands belonging to Ratnavale but the lands were not in fact charged.

The respondent caused a caveat to be entered against the lands of Ratnavale. The appellants, after the death of Ratnavale, applied to have the caveat removed. It was argued that it was the company who had a caveatable interest but not the respondent. The learned judge, held that the respondent had a caveatable interest and refused the application for the removal of the caveats. The appellants appealed.

Held, dismissing the appeal: as it appeared that the money was lent by the company and that it was the intention of the parties that the loan should be secured by a charge, both the company and the respondent, acting as the managing director of the company, had a caveatable interest in the lands.

FEDERAL COURT.

M. Sivalingam (M. Singaram with him) for the appellants.

Karpal Singh (Gan Teik Chee with him) for the respondent.

Suffian L.P.: The question for our determination in this appeal is whether the respondent has a caveatable interest in two pieces of land in Kedah. The expression "caveatable interest" though in frequent use is not defined, and section 323 of the National Land Code merely states

"(1) The persons and bodies at whose instance a private caveat may be entered are —

- (a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest...."

The learned judge held that the respondent had and has caveatable interest and refused to remove the two caveats entered against the lands.

The appellants contend that if any one has a caveatable interest it is Messrs. Manilal & Sons (M) Sdn. Bhd. (hereinafter referred to as the company), not the respondent.

To understand the argument, it is necessary to set out some of the facts.

One Ratnavale had some business dealings with the respondent, who is the managing director of the company.

On March 21, 1967, the company paid Ratnavale through his solicitors Messrs. Ong Huck Lim & Co. \$250,000. This is evidenced by the receipt at page 56 of the appeal record which reads:

"ONG HUCK LIM & CO.,
ADVOCATES & SOLICITORS,
16A, Beach Street,

A Penang.

CLIENTS NO. 10816
Penang, March 21, 1967.Re: Charge of Grant No. 715 for Lot No. 461 and
Grant No. 1171 for Lot 290, Mukim of Kulim.Received from M/s. Manilal & Sons (M) Ltd., the sum of
Dollars Two Hundred and fifty thousand only for above.
\$250,000
Cashier

B

Six-cent stamp."

It is to be noted that that receipt clearly states that the money was received from the *company* rather than from the respondent personally, and secondly it referred to a charge of the two lands.

Somehow or other the lands were never charged to the company or the respondent.

On October 10, 1972, the company's solicitor wrote the letter at page 37 of the appeal record to Ratnavale's solicitor pointing out that the latter had received on the company's behalf \$250,000 "for effecting a certain transaction with Mr. M. Ratnavale" and asking for the return of that money within a week as the transaction had not come through.

But on November 2, 1972, the respondent's solicitor wrote a letter to Ratnavale and his wife referring to a meeting at which both of them admitted having taken the \$250,000 from the *respondent* rather than from the company. This letter (at page 34) also referred to an arrangement between the Ratnavales and the respondent whereby the Ratnavales were to buy Bukit Merah Estate which consisted of five separate pieces of land, the respondent was to have \$250,000 worth of shares in the venture (hence presumably the payment of the \$250,000) and this share was to be secured by a charge over the five lots constituting the Estate. The letter also referred to an agreement by the Ratnavales that they would transfer to the respondent some portions of the Estate to the value of \$250,000 less whatever had been repaid. Finally the letter gave warning that the respondent's solicitors might enter a caveat against the lands.

On November 6, 1972, the respondent applied to caveat the land. In his application (page 20 of appeal record) he did not mention the company. He said that he was the beneficial owner of four pieces of lands, including the two in question, as their registered proprietor Ratnavale had agreed to transfer them to him as repayment of \$250,000 lent by him to Ratnavale.

Eventually the respondent withdrew the caveat against two pieces, leaving in being the caveat against the two pieces in question only, and it is with this caveat alone that we are concerned.

It will be noted that there is no reference in this application to the fact if true that the \$250,000 had been paid to Ratnavale by the company.

Ratnavale died on April 9, 1973, and his two brothers are now executors and trustees of his estate, applicants in the court below and appellants before us.

On July 18, 1974, the appellants applied to the court for an order that the caveat entered by the respondent be removed from the register. This application was heard on November 9, and on December 7, 1974, it was rejected by the learned judge.

In the meantime on July 30, 1974, the *respondent* had filed a suit in the Ipoh High Court against the appellants claiming simply the repayment of the full sum of \$200,000 (presumably Ratnavale had paid back some of the money) without in any way mentioning the transaction relating to the Bukit Merah Estate. During arguments of this appeal we were informed by Mr. Sivalingam on behalf of the appellants from the Bar that since then the *company* has been substituted for the respondent as plaintiff in that suit.

Mr. Sivalingam for the appellants strenuously argues before us that in view of the facts narrated above the respondent has no caveatable interest and that if anybody had it was the company, and that accordingly the court should order the removal of the caveat against these two lands.

Mr. Sivalingam argues —

- (1) that the learned judge was wrong in saying that —
 - (a) the interest claimed by the respondent was connected with the lands, the subject of the caveat; and
 - (b) the respondent had a registrable interest in the lands; and
- (2) that in view of the facts that —
 - (i) when the respondent applied for the caveat he stated in the statutory declaration that he was the beneficial owner of the lands while in his affidavit he claimed that the company was entitled to a charge over the lands as security; and
 - (ii) in the Ipoh High Court suit the respondent simply claimed for repayment of money, the learned judge should have held that the claim of the respondent was merely for the return of the money alleged to have been lent and that the respondent had no registrable interest that could be protected by a caveat.

With respect I do not think there is any merit in this appeal. The whole system of caveats is founded on the principle that they exist for the protection of *alleged* as well as proved interests. It is not for us at this stage to say whether or not the respondent or whether or not the company has a good claim at law against the appellants, but it seems clear that there is evidence which if believed at the trial of the substantive issue would establish that the respondent who was managing director of the company was acting throughout on behalf of the company in regard to the money paid to Ratnavale, and as the principle is that it is not only a person who has a right to a registrable interest in land that may enter a caveat against the land, but it is any person *claiming* title to, or any registrable interest in, any alienated land or even claiming only a right to such title or registrable interest, who may enter a caveat, in my judgment it was proper for the respondent to enter the caveat, and right for the learned judge to refuse to remove it, so that it may remain on the register until the disposal of the suit pending between the company and the appellants

- A The receipt, if believed, will show that the money lent to Ratnavale was lent by the company and that it was the intention of the parties at the time that the loan should be secured by a charge over the lands concerned. To the argument that in that case the company alone has a caveatable interest, I agree with the argument on behalf of the respondent that, as the respondent was acting in his capacity as managing director of the company, both the respondent and the company have a caveatable interest in the lands.
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I would therefore dismiss this appeal with costs, the appellants' deposit to be paid to the respondent against his taxed costs.

- C **Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J. concurred.**

Appeal dismissed.

Solicitors: *Khong & Son; Gan Teik Chee.*

D

I. INVESTMENT LTD. v. COMPTROLLER-GENERAL OF INLAND REVENUE

[F.C. (Gill C.J. (Malaya), Raja Azlan Shah & Wan Suleiman F.J.) June 13, 1975]

- E [Kuala Lumpur — Federal Court Civil Appeal No. 50 of 1973]

Income Tax — Transfer of immovable property by company to another company in exchange for shares — Isolated transaction — Surrounding circumstances — Whether trafficking in immovable property — Whether profits liable to income tax — Evidence of accounting practice — Income Tax Ordinance, 1947, s. 10(1)(a).

- F This was an appeal from the decision of Ong Hock Sim J. (reported in [1973] 2 M.L.J. 10). The appellant company one of whose objects was to traffic and otherwise deal in or turn into account immovable property, had acquired certain lands and had begun building operations on the lands. Subsequently it agreed to sell the lands and the uncompleted building on it to another company in exchange for shares in the company. These shares were subsequently transferred by the company. The company was assessed to tax on the profits obtained by it. On appeal, the Special Commissioners upheld the assessment and a further appeal to the High Court was dismissed. The appellant company appealed to the Federal Court.
- G

Held, dismissing the appeal: there was evidence in this case on which the Special Commissioners could conclude that the appellant company was carrying on a business in immovable property, so that the profits made were assessable to income tax.

- H Cases referred to:-

- (1) *Commissioners of Inland Revenue v. Reinhold* 34 T.C. 389, 392.
- (2) *California Copper Syndicate v. Harris* 5 T.C. 159.
- (3) *D.E.F. v. Comptroller of Income Tax* [1961] M.L.J. 55.
- (4) *E. v. Comptroller-General of Inland Revenue* [1970] 2 M.L.J. 117.
- (5) *Commissioners of Inland Revenue v. The Korean Syndicate* 12 T.C. 181, 202.
- (6) *John Smith & Son v. Moore* 12 T.C. 266, 282.
- (7) *Golden Horse Shoe (New) Ltd. v. Thurgood* 18 T.C. 280, 300.
- (8) *Heather v. P.E. Consulting Group Ltd.* 48 T.C. 293, 322.
- (9) *Commissioners of Inland Revenue v. South Behar Railway Co. Ltd.* 12 T.C. 712.

I